

## **ACCESS TO PORT AUTHORITY RECORDS – ENSURING OPEN PUBLIC RECORDS – PORT AUTHORITY FREEDOM OF INFORMATION CODE**

The business and activities of The Port Authority of New York and New Jersey have a substantial impact on the people of the States of New York and New Jersey, especially within the Port District and particularly the customers who use its facilities every day. As recognized in its By-Laws, it is the goal and policy of the Port Authority to conduct its business and activities in the public interest and therefore the public should have access to the records of the Port Authority to the greatest extent possible.

The Committee on Operations first adopted a Freedom of Information Policy in 1977, which was revised over the years. Since 1992, the meetings of the Port Authority's Board and its Committees have been open to the public, under a Board policy adopted consistent with Open Meetings legislation adopted by the two States. Beginning in December 2006, and most recently in November 2008, the Board has expanded upon the agency's transparency in governance through complementary policy statements, while protecting sensitive security information, the public's safety, and the privacy expectations of individuals.

In order for the goal of greater transparency in governance to be achieved, a more efficient and clear policy statement, both for the guidance of staff and for the expectations of the public, must be implemented. A streamlined process, with timely results and subject to judicial recourse in the States of New York and New Jersey, will begin to accomplish these goals. In addition, we will be utilizing the ever-expanding resources of the electronic information age to take advantage of the ability to disseminate information through the Port Authority's Web site and other similar tools.

The Port Authority reviewed, as it has in the past, the records access policies of the two States: in New Jersey, the Open Public Records Act and regulations adopted in connection with that Act, decisions of the Government Records Council, executive orders and judicial decisions regarding access to public records, and in New York, the Freedom of Information and Privacy Laws, regulations adopted in connection with those laws, the decisions and advice of the Committee on Open Government, and judicial decisions regarding access to public records. A revised statement, in the form of a Port Authority Freedom of Information Code applicable to the Records of the Port Authority was presented to the Board. Upon adoption, the Freedom of Information Code is to be effective on or about April 15, 2012, consistent with the Governors' reviews, and will be applied to all responses to requests for records after its effective date unless otherwise precluded by law or contractual provision.

In addition to today's adoption of a Freedom of Information Code, the Board has directed staff to expand efforts and to continue to make Records and information available to the public through other means, such as the Port Authority's Web site. Finally, it is proposed that the fee provisions of the Freedom of Information Code be suspended, on a trial basis, to determine whether the proposed posting of information on the Port Authority's Web site may preclude the necessity for imposing such fees.

Pursuant to the foregoing report, the Committee on Operations, acting for and on behalf of the Board pursuant to delegated authority, adopted the following resolution, with Commissioners Bauer, Moerdler, Pocino, Rechler, Samson, Sartor, Schuber and Steiner voting in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Committee being present.

**RESOLVED**, that the Commissioners express our strong commitment to transparency in the conduct of the public's business, so that the Port Authority and its employees may hold the respect and confidence of the people of the States of New York and New Jersey; and it is further

**RESOLVED**, that the activities and decisions of the Port Authority are the public's business, and, therefore, the public should have access to the records of the Port Authority to the greatest extent possible, and to that end the Port Authority Freedom of Information Code is hereby adopted; and it is further

**RESOLVED**, that the resolution of the Board adopted on November 20, 2008, relating to Freedom of Information (appearing at pages 329 *et seq.* of the Official Minutes of that date), shall be, and it hereby is, rescinded (except, to the extent applicable, if it is required by existing contracts with third parties); and it is further

**RESOLVED**, that any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or imaged processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, generated, maintained, received in the course of transacting official business and kept on file (collectively, "Records") of the Port Authority shall be made available for public inspection and/or copying, except that such access or copying may be denied as to Records or portions of Records which:

1. federal or state law or regulations or rules or decisions of court render confidential or privileged or exempt from disclosure, including any Record within the attorney-client privilege, or Records which, if disclosed, would constitute an unwarranted invasion of personal privacy of an individual or individuals, including lists of names and addresses to be used for profit or financial gain, sexual harassment complaints, grievances involving individual employees (filed by or against an employee), personnel, medical or disciplinary records (with Records or portions of Records indicating a Port Authority employee's compensation, pension, employment and salary history and qualifications as shown on résumés, for example, not exempted), and financial account numbers, including, in addition to Social Security Numbers, bank account, credit card, personal or cell telephone, or driver's license numbers, and electronic mail addresses; or
2. a. if disclosed, would impair, or give a competitive advantage in connection with, present or imminent awards or negotiation of

collective bargaining agreements, leases, permits, contracts or other agreements, open procurement matters, contracts not yet awarded, unexecuted leases or permits, and portions of scoring or evaluation documents not constituting a part of a final agency action document; or

b. are trade secrets, or are submitted by or derived from information obtained from a commercial enterprise and which, if disclosed, would cause injury to the competitive position of the subject enterprise, including résumés of individuals submitted by unsuccessful bidders, internal business protocols, systems or strategies specific to the commercial enterprise or to the project, as well as technology or equipment that the unsuccessful bidder has developed; or

3. are compiled for public safety, law enforcement or official investigatory (internal or external) purposes, when their disclosure may affect public safety, interfere with investigations, audits, law enforcement investigations, or judicial or disciplinary proceedings, or deny or prejudice a right to a fair trial or impartial adjudication, or identify a confidential source or disclose confidential information relating to an audit or an ongoing civil, criminal, or internal or external disciplinary investigation, including any reports, statements, transcripts or recordings related to an ongoing investigation, audit or proceeding; or
4. if disclosed, could endanger the life or safety of any person or jeopardize the safety and/or security of any facility or information technology system, including drawings, maps, or sketches of non-public areas, administrative or technical information regarding computer networks, hardware or software related to security systems, emergency or security plans or procedures for any building or facility, or security or safety procedures or surveillance techniques or details; or
5. are inter-agency or intra-agency advisory, consultative or deliberative Records, such as recommendations and communications to or from, and discussions among the members of the Board of Commissioners, the Governors of the States of New York and New Jersey and the Port Authority (or the staffs of the foregoing); and inter-agency or intra-agency memoranda, draft reports and presentations, or e-mail messages, which are not statistical or factual tabulations of data, with instructions to staff that affect the public or final agency policy or determinations not exempted; or
6. are examination questions or answers which are requested prior to final administration of such questions;

and it is further

**RESOLVED**, that the Secretary of the Port Authority shall maintain a reasonably detailed current list, by subject matter, of all Records in the possession of the Port Authority, whether or not available hereunder; and shall, under the direction of the Executive Director, administer this Code pursuant to the following procedures:

A. Requests

Requests for inspection or copying of Records of the Port Authority may be made to the Secretary of the Port Authority (or the Secretary's designee) in writing, and may be submitted:

1. in person, during regular business hours at the Port Authority's main office;
2. by postal or private delivery, addressed to the Secretary, The Port Authority of New York and New Jersey, at the Port Authority's main office, Attention: FOI Administrator;
3. by facsimile, addressed to the Secretary, The Port Authority of New York and New Jersey, at the Port Authority's main office, Attention: FOI Administrator, at the telephone extension designated for this purpose; or
4. by electronic means, such as electronic mail addressed to the Secretary, The Port Authority of New York and New Jersey, Attention: FOI Administrator, at the e-mail address designated for this purpose, or through the Port Authority's Web site.

Requests must contain sufficient information to locate and identify the particular Record(s) sought. Such requests must not be overly broad, but must be as detailed as possible and provide, at a minimum, a clear description of the Record or type of Record being sought. Requests seeking "any and all records" regarding a facility, project, contract, or other activity are overly broad.

B. Determination of Availability

Within five (5) business days following the receipt of a request, the Secretary of the Port Authority (or the Secretary's designee) must:

1. make the Record available, in whole or in part; or
2. deny the request; or
3. acknowledge the receipt of the request and provide a written statement to the requester of the approximate date when the request will be granted in whole or in part (or denied). If circumstances prevent a determination of availability from being made within twenty (20) business days from the date of acknowledgement, the Secretary of the Port Authority (or the or the Secretary's designee) must notify

the requester in writing of the reason for the delay and provide a date certain within a reasonable period when the request will be granted in whole or in part.

If the request is granted in whole or in part, the person making the request shall be notified that the responsive Record has been posted on the Port Authority's Web site (including the specific location) and is available for inspection. If the requestor wishes to obtain paper copies of the available responsive Record(s), copies will be made available upon payment of the appropriate fees.

If the request is denied, the requester shall be advised in writing of the reasons, including the exemption(s) applied to deny access to the requested Record.

If no responsive Records are found, the requester will be notified in writing.

C. Finality

The Determinations made under this Code by the Secretary of the Port Authority (or the Secretary's designee) shall be final. Any person who is denied access to a Record of the Port Authority may, therefore, seek such judicial recourse as may be available in either State.

D. Fees

When a request for access to Records is granted, in whole or in part, the responsive Record(s) will be posted on the Port Authority's Web site (subject to any applicable redactions consistent with this Code). If the requester wishes to personally review the Records, they will be made available for inspection under the supervision of such officers or employees of the Port Authority at such locations and at such times as may be designated by the Secretary of the Port Authority.

If a requester seeks tangible, "hard" copies of Records rather than or in addition to access to Records, such Records will be copied by the Port Authority, if practical, for a fee of twenty-five cents (25¢) for each page and five dollars (\$5.00) for Records provided in compact disk (or other comparable) format. The Secretary of the Port Authority may modify or establish, from time to time, appropriate fees for producing copies, including copies in other formats, such as when such Records are of unique size or volume or when it may not be practical for the Port Authority to reproduce or make available on the Port Authority's Web site. In such instances, the requested Record(s) may be reproduced commercially, and the person requesting the copy will be charged for the full cost of such commercial reproduction.

A fee of no less than two dollars (\$2.00) will be charged for certification as to the authenticity of any document, or that a Record cannot be found.

In the event a search for Records requested will require more than one "person hour," or in the event a search of computer records will require programming that

would take more than one “person hour,” the requester will be advised in advance of the anticipated cost, which will be charged based on the labor cost of personnel assigned to conduct the search or programming, as determined for such search by the Secretary of the Port Authority. Following the search, access may be denied to any Records in whole or in part, under the applicable Code exemption(s) regardless of the amount paid for the search. Additionally, payment of the search fee(s) does not guarantee that any Records responsive to the request will be located or if located that such Records responsive to the request will be available for inspection or copying under this Code.

When the Port Authority is required to pay a contractor or other third party in possession of Records for purposes of effectuating such Port Authority contract, the Secretary of the Port Authority may establish and charge appropriate fees to defray the Port Authority’s costs for such search. Such fees shall be reasonable and based upon the actual direct cost of obtaining the Records in the possession of the third party. In all cases, the requester shall be advised of the proposed fees in advance. Additionally, payment of the search fee(s) does not guarantee that any Record(s) responsive to the request will be located or if located that such Record(s) responsive to the request will be available for inspection or copying under this Code.

E. Payment of Fees

All fees and costs shall be paid in cash, by certified check, money order or cashier’s check, or by any other means deemed reasonable by the Secretary of the Port Authority. Checks or money orders are to be made payable to “The Port Authority of New York and New Jersey.” Payment must be received in advance of the search or at the time of the delivery for inspection or copying of any records or the Secretary’s certification;

and it is further

**RESOLVED**, that Parts D and E (involving the collection of fees) in the immediately preceding procedures for administration of this Code shall be and they hereby are suspended for a period extending not later than April 1, 2013, on a pilot or trial basis; and it is further

**RESOLVED**, that the Port Authority shall review this Code (including the suspension of fees) from time to time, with the first review no later than April 1, 2013, to ensure compliance with the standards and goals established in connection with transparency and access to Records; and it is further

**RESOLVED**, that the Executive Director and the Secretary of the Port Authority be and each hereby is authorized, for and on behalf of the Port Authority, to take such actions with respect to the public inspection and copying of available Records of the Port Authority, consistent with this Code, as may be necessary or appropriate in the best interest of the Port Authority or of the public; and it is further

**RESOLVED**, that, consistent with Port Authority policies and relevant provisions of law, information about the business of the Port Authority will continue to be posted on the Port Authority's Web site, from time to time, irrespective of whether such information is requested under this Code.